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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

MYRICK TANTIADO, an individual,

Plaintiff,

v.

POWER MEDICAL INTERVENTIONS, a
 Pennsylvania corporation, and DOES ONE
 through FIFTY, inclusive,

Defendants.

Case No. C 07-02874 CRB

**DECLARATION OF JOHN E. DUKE
 IN SUPPORT OF DEFENDANT'S
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT**

Hearing Date: September 5, 2008

Time: 10:00 a.m.

Judge: Hon. Charles R. Breyer

Courtroom: 8

I, John E. Duke, declare:

1. I am a member of the Bar of the Commonwealth of Massachusetts and a member of the law firm of Foley Hoag LLP, admitted to this Court *pro hac vice* to serve as counsel of record for defendant Power Medical Interventions, Inc. ("PMI"). I make this

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1 Declaration in support of PMI's motion for partial summary judgment. I have personal knowledge
2 of the facts stated in this Declaration, and if called upon, could and would testify competently
3 thereto.

4 2. Attached to this Declaration as Exhibit A is a true and accurate copy of the
5 pages from the transcript of the Deposition of Myrick Tantiado and exhibits thereto cited in
6 support of PMI's motion for partial summary judgment.

7 3. Attached to this Declaration as Exhibit B is a true and accurate copy of the
8 pages from the transcript of the Deposition of Robert Chase cited in support of PMI's motion for
9 partial summary judgment.

10 4. Attached to this Declaration as Exhibit C is a true and accurate copy of
11 Defendant Power Medical Intervention's Supplemental Answers to Plaintiff's First Set of
12 Interrogatories, Answer to Interrogatory Nos. 3 and 22.

13 5. Attached to this Declaration as Exhibit D is a true and accurate copy of
14 Plaintiff's Response to Defendant's First Set of Interrogatories, Answer to Interrogatory No. 5.

15 6. Attached to this Declaration as Exhibit E is a true and accurate copy of the
16 Declaration of Michael Whitman in Support of Defendant's Motion for Partial Summary
17 Judgment. Although Mr. Whitman is currently in Strasbourg, France and was unable to return the
18 executed affidavit in time for it to be filed with the other summary judgment papers filed herewith,
19 he has read, approved, and attested to the truth of the facts in his Declaration. A true and accurate
20 copy of Mr. Whitman's Declaration will be filed with the Court on Monday, July 28, 2008.

21 Executed on July 25, 2008, at Boston, Massachusetts.

22 I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct.

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25
26 

27 John E. Duke
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